RECENT CASES.

BANKRUPTCY—EFFECT OF DISCHARGE—JUDGMENT FOR DAMAGES FOR CRIMINAL CONVERSATION.—TINKER v. COLWELL, 24 SUP. CT. 505. *Held*, that a judgment for damages for criminal conversation is one recovered in an action "for willful and malicious injuries to the person or property of another" within the meaning of the Bankruptcy Act, (30 Stat. at L. 550), par. 17, subd. 2, excepting judgments recovered in such actions from the operation of a discharge in bankruptcy. Brown, White, and Holmes, JJ., *dissenting*.

It is by a very just, and well written, liberal interpretation of the statute that this decision is maintained. If interpreted according to strict logic, the statute might have caused this decision to have gone the other way. For criminal conversation can hardly be said to be malicious toward the husband, unless malice be specifically proved. *Livergood v. Greer*, 43 Ill. 213; *Anderson v. Howe*, 116 N. Y. 342; *Com. v. Williams*, 110 Mass. 401. Nor can it be said to be an injury either to his person; *Ryall v. Kennedy*, 52 How. Prac. 517; or to his property. In Re Haensell, 91 Fed. 355.

BANKRUPTCY—FRAUDULENT CONVEYANCE—SUIT TO SET ASIDE.—BEASLEY v. COGGINS, 12 A. B. R. 355.—This was a suit brought by a trustee in bankruptcy to set aside a conveyance made by the bankrupt. No creditor had reduced a claim to judgment. *Held*, that a trustee in bankruptcy may file a bill in equity to set aside a fraudulent conveyance of real estate though neither he nor any creditor has reduced a claim against the bankrupt to judgment.

A creditor must reduce his claim to judgment or exhaust his legal remedies before he can maintain a bill in equity to set aside a fraudulent conveyance of his debtor. *Ellis v. S. W. L. Co.*, 108 Wis. 313; *Case v. Beauregard*, 101 U. S. 690; *Shellington v. Howland*, 53 N. Y. 371. The right of action to recover property fraudulently conveyed prior to adjudication is exclusively in the trustee. *Glenny v. Langdon*, 98 U. S. 20; *Trimble v. Woodhead*, 102 U. S. 647; *Pratt v. Curtis*, 6 N. B. R. 139. If a trustee could not attack a fraudulent conveyance which creditors are not permitted to attack the act would be a device to permit a fraudulent conveyance to take effect, provided it might be concealed for the specified four months. *In re Gray*, 3 A. B. R. 647; *In re Leland*, 10 Blatchf. 647. The Bankruptcy Act vested the trustee with the title of all the property fraudulently conveyed by the bankrupt and he acquires his right of action through the Act and not through what may have been done by the creditors. *In re Tollett*, 105 Fed. 425; *In re Duncan*, 14 N. B. R. 33; Section 70-A, *Bankruptcy Act*. The late case of *Sheldon v. Parker*, 11 A. B. R. 169 is directly in point on this question and holds that the law under which the trustee is appointed authorizes him to bring and maintain actions of this character. *Mueller v. Bruss*, 112 Wis. 406; *Hood v. Bank*, 91 N. W. 701.

BANKRUPTCY—JURISDICTION—ADVERSE CLAIM—CONSENT.—IN RE ADAMS, 12 A. B. R. 367.—*Held*, that the merits of a claim to property received from the bankrupt before the filing of his petition as a part payment of a debt and

without reasonable cause to believe that it was intended thereby to give a preference cannot be determined on a summary petition, against the claimant's objection.

In the case of *In re N. Y. Car Wheel W.*, 132 Fed. 203, the court says: "A referee is without jurisdiction in a summary proceeding to require a third person to turn over to a trustee in bankruptcy money or property to which he asserts an adverse claim, where such claim is made with the apparent intention to defend the same and is not merely colorable." Sec. 23-A *Bankruptcy Act; American Trust Co. of Pittsburgh v. Wallis*, 126 Fed. 464; *Bardes v. Hawarden Bank*, 178 U. S. 524. It is otherwise when the claim is asserted in fraud of creditors or is merely colorable. *In re Knickerbocker*, 121 Fed. 1004; *In re Michie*, 116 Fed. 749; *Boyd v. Glucklick*, 116 Fed. 131. Or when the adverse claimant invokes the jurisdiction of the bankrupt court. *In re D. H. McBride & Co.*, 132 Fed. 285. When it is shown that a claim is adversely asserted with an apparent intention to protect the same by the usual process of the law, the bankruptcy court is bound to exercise its power with cautious discretion. *In re Kane*, 131 Fed. 386. The court says in *In re Teschmacher*, 11 A. B. R. 547, that "the adverse claimant is entitled to have his contention examined and judged according to the ordinary and regular process of law."

BANKRUPTCY—JURISDICTION—INVOLUNTARY PETITION—AMENDMENT.—IN RE STEIN, 12 A. B. R. 364.—An involuntary petition was filed with all necessary averments to give the court jurisdiction but with a deficiency in the amount. A demurrer was filed and on the same day additional claims were also filed to cure the defect in the petition.—*Held*, that an involuntary petition may not be amended by joining other creditors with claims enough to make up the $500 requisite to confer jurisdiction upon the court.

The court has jurisdiction only when the averments are set out according to the Bankruptcy Act. *In re Scammon*, 6 Biss. 130; *In re Burch*, 10 N. B. R. 150; *In re Rosenfield*, 11 N. B. R. 86. Amendment will be allowed if the original petition alleges a sufficient number of petitioners, other averments being as required, though it is subsequently discovered that there is a deficiency. *In re Stein*, 105 Fed. 749. Also, in case subsequent proceedings develop that the provable claims did not amount to the required sum as set forth in the petition, the court will retain jurisdiction and allow amendment. *Colliers Bankruptcy*, 330; *In re Beddingfield*, 96 Fed. 180. The court distinguishes these cases on the ground that jurisdiction had been assumed and it is upheld in this opinion by the *dicta* in *In re Mackey*, 6 A. B. R. 577, and in *In re Mammoth Pine & L. Co.*, 109 Fed. 308. Cases of this kind are not likely to arise except through clerical error, as did this one.

CONSTITUTIONAL LAW—DUE PROCESS—PUBLIC NUISANCE—ABATEMENT.—MCCONNELL V. MCKILLUP, 99 N. W. 505 (NEB.).—*Held*, that a statutory provision subjecting property of a nature innocent in itself and subject to beneficial use to forfeiture to the state for unlawful user, without providing for a hearing, deprives the owner of his property without due process of law.

Forfeitures are not adjudgable by legislative act, except it may be for a violation of the revenue laws. *U. S. v. Brig Molek*, 2 How. 216; *Henderson's D. S.*, 14 Wall. 414. The legislature has the right to authorize judicial proceedings to be taken for the condemnation of property which they have declared to be a nuisance. *Barbier v. Connolly*, 113 U. S. 27; *Wurts v.*